

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-354

June 13, 2000

MAINE NATURAL GAS, L.L.C.
Request for Approval of Affiliated
Interest Transaction With Union
Water Power Company and for
Waiver of Chapter 820

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we approve Maine Natural Gas's request for a waiver from Chapter 820 § 3(A) and allow certain affiliated interest transactions between Maine Natural Gas and its affiliate, Union Water Power (UWP).

II. MAINE NATURAL GAS'S REQUEST

On April 20, 2000, Maine Natural Gas (MNG) filed a petition asking the Commission to waive Chapter 820 § 3(A) of the Commission's rules and to approve, pursuant to 35-A M.R.S.A. § 707, certain planned affiliated interest transactions between MNG and Union Water Power, an affiliated interest of MNG. MNG makes this request so it can lawfully enter into an Areawide Contract with the United States General Services Administration (GSA) for gas, gas transportation and energy management services. The Areawide Contract provides a pre-established contracting mechanism for federal agencies, through the GSA, to obtain certain services from MNG, as a regulated utility.

Chapter 820 of the Commission's rules requires MNG to conduct energy management services, such as those at issue here, in a separate subsidiary. However, the federal law allowing Areawide Contracts requires the Areawide Contract to be entered into with the regulated public utility. It allows the utility to use a subsidiary to undertake the work, but the contracting party must be the utility.

MNG seeks approval to enter into the Areawide Contract and assign work it obtains to UWP. UWP assumes all costs associated with the contract and indemnifies MNG against any risks. UWP will pay MNG 5% of its projected net profits from each project.

The Commission recently approved a virtually identical arrangement between Central Maine Power Company and Union Water Power Company. Central Maine Power Company, Request for Approval of Affiliated Interest Transaction (Extension of Agreement with Union Water Power Company for Energy Management Services),

Docket No. 2000-109, Order Approving Stipulation (Apr. 13, 2000). This was an extension of an earlier arrangement previously approved by the Commission in 1998. *Id.* at 1.

III. PROCEDURAL BACKGROUND

Given that the filing was virtually identical to the one approved in Docket No. 2000-109, the Commission designated it as a non-adjudicatory matter. On May 12, 2000, the Public Advocate submitted a letter stating he did not object to MNG's request being approved as filed. On the same day, the Presiding Officer received a telephone call from Mr. Jim Lucy of Honeywell Corporation (Honeywell), expressing his concern about certain activities between Central Maine Power Company and UWP, which he viewed as creating an unfair competitive advantage for UWP over other energy services providers. He expressed an interest in participating in this docket due to his concerns.

On May 23, 2000, the Presiding Officer held a prehearing conference to hear the concerns of interested persons and to determine if additional process was necessary given these concerns. Representatives of Honeywell, Sebago Energy Conservation (Sebago), UWP and MNG participated in this conference. At the close of the conference, the Presiding Officer stated that she would recommend a decision to the Commission and allow all interested persons to comment on that recommendation. She issued her recommended decision on May 31, 2000. Only MNG filed comments.

IV. COMMENTS OF INTERESTED PERSONS

Honeywell and Sebago representatives are primarily concerned that the Areawide Contract unfairly advantages MNG (and CMP) and its affiliates over energy service companies (ESCOs) that are not affiliated with utilities. They also are concerned that MNG and CMP, as regulated utilities with established relationships with customers, may share information and use utility contacts to direct energy service work to their affiliate, UWP.

UWP responded that government facilities are not required to obtain services under the Areawide Contracts and that competition for federal projects exists, particularly through other federal programs. UWP also denied any improper contacts. UWP further explained that it subcontracts any work it obtains through an Areawide Contract. This subcontracting is conducted pursuant to federal requirements. Therefore, other ESCOs have an opportunity to obtain work from federal facilities by directly contracting, through other federal programs such as ESPCs and Super ESPCs, or through subcontracts with utilities that have Areawide Contracts.

V. DISCUSSION AND DECISION

We find that approving MNG's waiver request and affiliated interest transactions with UWP to allow it to enter into an Areawide Contract with GSA is in the public interest. The contract may further the federal government's interest in lowering its energy costs and allow the more efficient use of energy in Maine. Even though the Areawide contract is in effect a sole-source contract, competitive bidding continues to exist by UWP subcontracting the work it obtains under an Areawide Contract. In addition, federal facilities are not limited to only obtaining energy management services under Areawide Contracts. Other contracting programs exist, under which utilities are not even eligible to participate. Therefore, we do not agree with the ESCO commenters that our granting of this waiver will negatively affect competition.¹

We further find that approving this arrangement is consistent with the requirement in 35-A M.R.S.A. § 713 that "the Commission shall attempt to ensure that the utility or affiliated interest does not have an unfair advantage in any competitive market as a result of its regulated status or its affiliation with a regulated utility." The statute defines "undue competitive advantage" as an advantage gained by violating the requirements of Chapter 820. Chapter 820 governs the relationships between utilities and their affiliates primarily to ensure that ratepayers do not pay for costs attributable to unregulated business ventures undertaken by utilities or their affiliates.

There is no evidence that MNG's entering into the Areawide Contract, with any work under the contract being undertaken by UWP, has or will result in violations of Chapter 820's accounting or standards of conduct provisions. The ESCO commenters expressed concern that CMP may be violating the codes of conduct in its relationship with UWP, beyond the Areawide Contract context. The standards limit the use of certain customer information. If a utility provides information to its affiliate, it must provide such information to non-affiliates at their request. A utility cannot refer its customers to an affiliate without also providing the names of non-affiliates to its customers. Chapter 820 § 8. We addressed concerns about affiliate transactions between CMP and MNG in recent orders concerning the use of CMP's right-of-ways. Docket No. 99-739, Central Maine Power Company, CMP Natural Gas, LLC, Request for Approval of Affiliated Interest Transaction, Sale of Assets (Property), Order (Feb. 18, 2000); Order (May 19, 2000). As we stated

[a]ffiliate transactions are always likely to engender suspicion. However, we note that the extent CMP and CMPNG [now Maine Natural Gas] comport themselves in a manner that removes the opportunity for or appearance of

¹ We note that the waiver is necessitated by the federal requirement that the Areawide Contract be executed with the utility and not with its affiliate. Thus, the effect of denying waiver requests in these situations would be to exclude utility affiliates from these contracts, a result that is not consistent with the established policy of allowing this activity subject to certain safeguards for ratepayers and competitors.

favoritism between affiliates, the better protection they will have against charges of inappropriate affiliate dealings. So long as an opportunity for or appearance of favoritism exists, CMP and CMPNG may be inviting continued lengthy and expensive proceedings when seeking approvals under 35-A M.R.S.A. § 707.

Id. at 2. Once again we remind CMP and MNG and their affiliates of these limitations. However, in this case, the ESCO commenters described their suspicion about unfair dealings but provided no evidence of such nor did they provide other information that would cause us to turn down MNG's request.

Therefore, we

1. approve, pursuant to 35-A M.R.S.A. § 707, the affiliated interest transactions, to be implemented through the proposed standard assignment agreements, as not adverse to the public interest;
2. waive the separate corporate entity requirement in Chapter 820 § 3(A);
and
3. allow MNG to use its bills to charge federal agencies for energy management services performed under the Areawide Contract, as described in MNG's filing of April 20, 2000.

Dated at Augusta, Maine, this 13th day of June, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.